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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/336,709   | 06/21/1999  | PHILIP KELLER        | 52352-035           | 7973             |
| 20277  | 7590        | 06/07/2005           | EXAMINER            |                  |
| MCDERMOTT WILL & EMERY LLP<br>600 13TH STREET, N.W.<br>WASHINGTON, DC 20005-3096 |             |                      | HAROLD, JEFFEREY F  |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 2644                |                  |

DATE MAILED: 06/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 09/336,709             | KELLER ET AL.       |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Jefferey F. Harold     | 2644                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 16 December 2004.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-17 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,2 and 5-11 is/are rejected.

7) Claim(s) 3,4 and 12-17 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. **Claims 1, 2, and 5-11** are rejected under 35 U.S.C. 102(b) as being anticipated by Roberts et al. (United States Patent 4,637,064), hereinafter referenced as Roberts.

Regarding **claim 1**, Roberts discloses a local area network equalization system and method. In addition, Roberts discloses a process for configuring a transceiver for providing data communications via residential telephone wiring, wherein it is inherent that telephone communication is provided over CATV wiring, the method comprising the steps of: transmitting a pulse signal having a selected amplitude by a transmit section of the transceiver, receiving the pulse signal by an input circuit in a receiver section of the transceiver to produce a receive signal representing the pulse signal, and adjusting gain of the input circuit so as to produce the receive signal at a predetermined level, as disclosed at column 5, line 11 through column 6, line 52 and exhibited in figure 3.

Regarding **claim 2**, Roberts discloses everything claimed as applied above (see claim 1), in addition Roberts discloses wherein the gain of the input circuit is adjusted to a fixed level during initialization of the transceiver, as disclosed at column 5, line 11 through column 7, line 5 and exhibited in figure 3.

Regarding **claim 5**, Roberts discloses everything claimed as applied above (see claim 1), in addition Roberts discloses wherein the step of adjusting gain comprises comparing amplitude of the receive signal with a preset threshold, as disclosed at column 5, line 11 through column 7, line 5 and exhibited in figure 3.

Regarding **claim 6**, Roberts discloses everything claimed as applied above (see claim 5), in addition Roberts discloses wherein the gain is reduced if the amplitude of the receive signal exceeds the threshold level, as disclosed at column 5, line 11 through column 7, line 5 and exhibited in figure 3.

Regarding **claim 7**, Roberts discloses everything claimed as applied above (see claim 6), in addition Roberts discloses wherein the gain is increased if the amplitude of the receive signal is less than the threshold level, as disclosed at column 5, line 11 through column 7, line 5 and exhibited in figure 3.

Regarding **claims 8-11**, they are interpreted and thus rejected for the reasons set forth above in the rejection of claims 1, 2, and 5-7.

#### ***Allowable Subject Matter***

2. **Claims 3, 4 and 12-17** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

3. Applicant's arguments filed December 16, 2004 have been fully considered but they are not persuasive. Specifically, regarding the claimed transceiver, the above cited rejection more than adequately meets the claimed limitations, in addition, in column 5 of the Roberts rejection it refers to figure 2 where annotation 14 references the transceiver.

***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jefferey F. Harold whose telephone number is 571-272-7519. The examiner can normally be reached on Monday - Friday 9 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh H. Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jefferey F. Harold  
Examiner  
Art Unit 2644



JFH  
May 27, 2005